

# **PLAINTIFFS' EXHIBIT 19**

# Houston Police Department

## Continued Professional Training

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### Some Thoughts on Real Risk Management

Thanks for inviting me to Houston to speak to you regarding your chosen profession, the operations of the Houston Police Department. Chief Acevedo invited me here in 2017 and during that visit I may have met some/many of you here today. If that is true you know my focus in life is the management of risk.

My goal today is to give you some ideas and strategies regarding the discipline of risk management and how it applies to you and your specific job here at Houston PD, whether you are an administrative assistant, CSI, 9-1-1 dispatcher, street cop, detective or any other job in HPD operations. I am absolutely convinced that if more people understood the breadth and depth of real risk management, we would all be a lot better off.

For those of you I have not met over the years, in 1975 I got hooked on the study of tragedies – and I have spent way too much time studying tragedies in high-risk occupations including maritime tragedies, mining tragedies, refinery tragedies, train tragedies, plane tragedies, bridge tragedies, building tragedies, power plant tragedies and tragedies in America public safety organizations.

When you take a look at any tragedy in any profession and look for “What caused it?” – it is easy to spot the proximate cause. The event that instantly precedes the tragedy is relatively easy to spot. But real risk managers do not stop their search for cause with identifying the proximate cause.

Real risk managers go back in time and look for *problems lying in wait* – that people knew about or should know about – yet these problems are oftentimes ignored until the tragedy occurs.

Your role (and the role of everyone in every job in your public safety operations) is to take a daily look at your sphere of influence – your span of control – and ask these questions: Do we have *problems lying in wait* in our fleet? Do we have *problems lying in wait* in our infrastructure? Do we have *problems lying in wait* amongst our personnel? And if you identify such an issue – that needs to be addressed.

If you fail to identify and address these *problems lying in wait* sooner or later all the holes in the Swiss Cheese (the thoughts of Dr. James Reason) are going to become aligned –



and when that happens the tragedy occurs – and then the lawyers take over and the *problems lying in wait* are then identified and addressed – after the fact.

So, what can we do? Allow me to introduce you The Five Concurrent Themes for Success. I have put together this platform for success (a checklist – and I am a big fan of checklists) that may assist you in better improving your operations. This platform consists of five separate and distinct issues (themes) that when put together will allow you to analyze any of the tasks we do to better assure things get done right. Here are my Five Concurrent Themes for success.

Risk management is the cornerstone of these Five Concurrent Themes. With this in mind, we need to learn about the word “risk.” Risk is part of life. You took risks coming to this class today, even if it was just a short drive or an elevator ride. You will take a risk eating dinner tonight and traveling home at the end of this program.

There is not one of you in here today who has not heard the phrase, “risk management.” Unfortunately, the phrase is grossly misused, many times by people who have no clue what they are talking about. Let me assure you, the discipline of risk management is extraordinarily valuable to all of us in the high-risk profession of public safety operations.

Every identifiable risk is a manageable risk. You can eliminate some risks. You can avoid some risks. You can transfer some risks. You can share some risks. All of these are forms of managing risk. Properly managing risks prevents problems. Over the years, I have spoken extensively on the management of risk, and what your role is in public safety operations with respect to risk. This is where I would like to start our discussion.

Historically, most government operations do not take risk management seriously. Check any federal, state or local government phone directory. You will find a lot of government Lawyers, but few if any dedicated government risk managers.

This is an important point, which will be further addressed in this and the next paragraph. Next time you see a public safety agency in the news negatively anywhere in the U.S., give them a phone call. Find out how many personnel they have dedicated to internal affairs (post-incident) investigations, and how many are dedicated to background (pre-incident) investigations.

We would be better served by excluding bad people from our respective organizations up front, rather than firing them after they participate in some nefarious behavior. Contrary to the view of some of the loudmouths in the world, law enforcement is not some evil cauldron that takes good people and turns them into bad people. In the news recently were some stories about sports coaches molesting young kids. These predators were bad people long before they were hired involved team.

Along the same lines – too many public safety organizations - for a number of poorly thought out reasons, occasionally hire bad people who continue to be bad people.

Successful private sector companies take risk management more seriously than we do in government. Why?

Time out for a paid political statement. America is a nation of laws. We have heard that statement a lot since the terrorist murders of 9-11. It is very important (particularly in the world of police work) that we remember this thought, as it is critical to the survival of our country. We are a nation of laws.

Unfortunately, we have also become a nation of lawyers. I do not say this as lawyer bashing. I do not bash lawyers. Lawyers are fine people with good hearts and intentions, but with an extremely limited scope of thinking. They work in a different paradigm.

Their lives are focused on fixing things after they go bad. That is what they study in law school (case law) and that is what they do in their practices (clients with existing problems).

Again, they are good people, but with a limited scope of vision. Many of our fine elected officials at all levels of government are lawyers. They bring this thinking of post-incident correction with them into government work.

Risk managers do not think this way. Their lives are focused on pre-incident prevention of problems. I don't know one educated and trained risk manager in America who holds elected office. Not one!

This is not something that all of a sudden became important to me on September 11, 2001. This has been my focus over the last four decades. What will it take to wake people up? Prevention is better than correction. Small, smart expenditures of effort and money up front can prevent massive downstream problems. You can make this happen individually and organizationally.

Let's take time for a definition – and if you have been to any of my programs, you have seen this definition before including several times already today. I would like you to take a close look at this and try to remember the words. *Webster* takes a stab at defining “risk” as the “possibility of meeting danger or suffering a harm or loss” or “exposure to harm or loss.” As a follow then:

**Risk management is any activity that involves the evaluation of, or comparison of, risks and the development, selection and implementation of control measures that change outcomes.**

Or, more simply stated, risk management is the process of looking into the future (short or long term) and asking what can go wrong and then doing something about it to prevent it from going wrong. In RM 101 you are taught the concept of **RPM**: Recognition, Prioritization, Mobilization.

First, you must recognize the risks you and your people face in your particular organization. Next, you must prioritize them in terms of potential frequency, severity and available time to think prior to acting. Finally, you have to mobilize (act) to do something about the recognized and prioritized risks. This mobilization is the systems component – the second of my five concurrent themes for success.

What is a “system”? The word gets thrown around a lot but what does it mean. According to *Webster* – “an organized or established procedure” or an “accumulation of processes.” When you check under “process” and “procedure,” you will find a “particular way of accomplishing something” and also “a series of steps followed in a regular definite order.” Please recall that long before I went to law school, I did my graduate work at the ISSM – the Institute of Safety and Systems Management.

Whenever I see a tragedy in public safety operations (or outside of public safety for that matter) I always do the Systems DUI Analysis. Was there a properly **designed** system in place? Was it **up to date**? Was it being **implemented**? It gets down to design, update and implementation.

Please do not subscribe to the thinking that there is nothing that can be done to prevent tragedies. I am sick of that attitude! While we have a very risky profession, we are not in the most risky profession. Timber operations, commercial fishing, aviation, structural metal workers, and long-haul drivers all have higher adjusted loss rates than we do.

But take a look at some of the leaders in those occupations and see what they are doing. Timber operations are risky, but Boise-Cascade is underrepresented in problems. Aviation is dangerous, but Southwest Airlines has a phenomenal safety record. Trucking is dangerous, but UPS has a great safety record in their long-haul operations.

Chemical plant operations are dangerous, but DuPont is a vanguard in their industry. Construction projects are filled with risk – but the injury rate on Intel construction projects is 10% of what the injury rate is in the construction industry. I could bore you with successful organizations in every industry that have less problems because they have made a commitment to systems.

Well-designed systems, kept up to date and fully implemented, will never let you down. This is also true in our profession. First, your agency has to build good systems (policies and procedures) and keep these policies and procedures up to date. This is the responsibility of the executive team in your department and I am confident that HPD has well designed policies and procedures – and that they are up to date.

But, if you take the time to study the nasty consequences we get involved in, so many of them get down to systems not being implemented. There are three principle reasons that systems are not followed. They are:

**Arrogance: The rules do not apply to me.**

**Ignorance: I have no idea what the rules are.**

**Complacency: I have done it this way for a long time and will continue to do so.**

More on this throughout our day together, and this is a major concern of mine for me in all organizations. But for right now, let me ask you this question. Does Bud (or Budette) work in your department? Let me identify Bud for you.

Bottom line: HPD has well-designed policies and procedures. Your job is to know these policies and procedures and follow them.

Our third theme is Customer Service. This is such a critical issue today and frankly many public safety organizations (and their employees) do not quite understand the ramifications of not taking this seriously. This will be my focus later today, but for right now here is a three-point guide to creating loyal customers:

**Get things done right the first time.**

**Treat people right all the time.**

**Add in the WOW factor whenever possible.**

Our Fourth Theme is Accountability and the increasing lack of it in society and in too many organizations. This is a dying concept in so many organizations, with craziness abounding. Statements like "... that is not my job..." and "she doesn't work for me..." and "... we have never done it that way before..." are getting a bit tired and quite frankly customers are getting fed up with employees who are unable or unwilling to accept the fact that they need to be accountable.

Executive accountability starts with having good systems (policies and procedures) in place.

Executive accountability continues with promoting good women and men into supervisory positions who have the guts to enforce the policies of the organization, and then to support these supervisors when they make the tough calls.

Executive accountability continues with having a discipline system in place to address those in the organizations who are convinced that rules do not apply to them.

Finally, executive accountability includes a robust audit system (both formal and informal) in place to assure what you say you are doing is, in fact, being done.



Next, your supervision and management team has to assure that all department personnel are doing what they are getting paid to do (i.e., following the policies and procedures of their specific public safety agency). This is what supervisor accountability is all about – enforcing the policies that were developed by the executive team in your police department.

With respect to line personnel (and most of you are in that role today), your accountability is to know and follow the policies and procedures of the organization and following these systems. I don't care if it is the pursuit policy or the seatbelt policy or the FLSA policy or the harassment policy – we have to get our all of our line personnel following the policies of the organization.

Everyone in the organization, up, down and around the chain of command, has accountability. There are different levels of accountability, but each of us is accountable to do our jobs correctly. When accountability is not present, you have mediocrity. Mediocrity is at the top of a slippery slope that ends up in a loss of integrity.

Here is a quotation I have been using now for almost 20 years. In the '90s LAPD got in a ton of trouble with the Rampart Scandal. After the fact a number of experts (mostly lawyers) analyzed what caused this tragedy. While the lawyers focused on proximate cause – one fellow identified the *problem lying in wait*.

This nugget of gold was written by Commander Ross Swope of DC PD but everyone in every type of organization needs to understand these words and what they mean to your operations.

**“The major cause in the lack of integrity in  
American police officers is mediocrity.”**

The following passage is taken verbatim from the LAPD report, published March 2000:

Captain Swope went on to explain that mediocrity stems from the failure to hold officers responsible and accountable. It comes from a lack of commitment, laziness, excessive tolerance and the use of kid gloves. He felt that dealing with mediocrity is perhaps the greatest contemporary challenge to American law enforcement. When asked to explain how mediocrity is dangerous, Captain Swope drew an analogy of the bell curve. At the high end of the bell curve are those officers who practice all the core values: prudence, truth, courage, justice, honesty and responsibility. At the other end, are the officers with few of those values. In the large middle are those officers who have some or most of the core values. The extent of moral influence in a police department depends on the extent to which the upper and lower portions influence those in the middle. The men and women who control that influence are sergeants, lieutenants and captains. The irony is

that everyone within a work place knows full well which of the three categories their co-workers fall into. When officers in the middle see that officers at the bottom end are not dealt with, they sometimes begin to imitate their behavior. Similarly, when those at the top end are recognized and rewarded, they become the workplace standard. *The principal, though not exclusive, agents in encouraging top end or bottom end behaviors are supervisors and middle managers. It is our sergeants, lieutenants and captains who have the daily and ongoing responsibility to ensure that appropriate workplace standards are maintained. However, that observation in no way relieves upper managers from their responsibility to ensure that proper standards are being maintained in their subordinate commands by providing appropriate guidance, exerting their oversight responsibility and honestly evaluating the effectiveness of the commands for which they are ultimately responsible.*

Integrity is the fifth of these Five Concurrent Themes. Lose integrity and you will not be able to achieve the manifestation of integrity known as ethical behavior. Lose your ethical behavior and you have lost the public trust. Without the public trust, we have nothing. Where did this slippery slope start? Mediocrity is a cancer that can spread quickly in an organization and, if not eliminated, it will destroy your operations.

I have this odd belief that our citizens have the right to expect that all of our personnel possess this integrity, and not just at point of hire but throughout their employment career – and I am a huge fan of ongoing background investigations. And not to be Mr. Negative here – but how much damage could one bad employee in your department do?

You have had a recent event that made the national news. My former department has an ongoing overtime scandal that is making the national news. Massachusetts State Police has a major overtime scandal is national news. What we must recognize is that each of the incidents negatively impact all law enforcement operations around America. Cops get painted with the same broad brush – and we must all work at eliminating any behaviors that decrease public trust in law enforcement operations.

What I am trying to do here is to give you a checklist approach (and I love checklists and I am begging you to read *Checklist Manifesto* by Dr. Atul Gawande and it has direct applicability to what you do) to getting things done right.

Whatever the task is that you are doing or planning on doing – whatever your people are doing or thinking about doing, please start to analyze (if you have time) the task along these lines:



**What is the risk involved in this task and how can I best manage that risk?**

**What is the Houston PD system (policy) and how can I best assure its implementation?**

**Is there a customer service component here and, if so, how can I maximize customer service on this task?**

**Who is accountable for what on this specific task?**

**What are the issues of integrity involved in this specific task?**

If you try this for just a week, you will get it down to a couple of seconds per task. And if you use it regularly, you will have a higher probability of getting things done right and staying out of trouble.

And the anchor for these Five Concurrent Themes and my focus for our brief time together is the wonderful discipline of risk management.

Let's now move onto another topic - The Ten Families of Risk. As I looked at the thousands of risks that people face in a given law enforcement organization, I saw too many people who were overwhelmed by the volume of the issue. I wanted to make it easier to comprehend. So, let's break up the thousands of risks into 10 families.

This is a very quick overview of a very long program (80 hours) but you need to know this. As we speed through this portion of the program, I would like to take a look at each of these 10 families and ask yourself "What are the three (or more if you feel energized) greatest risks I face in each of these families and what control measures do we have in place to address these identified risks?" Also, please remember the assessment of risk is an ongoing process – not just immediately during our program today.

Here are the ten families of risk:

1. External Environment – Risks arising from outside the organization that impact your organization. And we know there are a number of these and they are increasing in frequency and severity. Included here are natural disasters, pandemics, terrorist activities and conduct (both intentional and negligent) by members our public that impacts our operations. This is the most complex and difficult family of risk you face as your control of these risks is very limited. But these risks need to be recognized and addressed if possible.
2. Legal and Regulatory – Risks arising from the complexity of or non-compliance with of the legal framework imposed on organizations like yours

in your state. If there is a law or ordinance in state or federal statutes that requires action or prohibits action – this rule must be known and followed. I am always amazed how many organizations – both private and public sector – including large ones with huge budgets – are not in compliance with the ADA, FLSA, and even the Public Records Act. And with the demand today for full transparency this could pose a major problem for you and your department. Do you have all the policies in place that are required by state and federal laws and regulations?

3. Strategic – Risks arising from the lack of priority setting and business planning leading to a reactive organization that is not prepared or flexible enough to deal with unforeseen events. This goes on a lot, particularly in smaller organizations that do not have sufficient personnel or time to plan for the future. Where will America be in 30 years? Where will HPD be in 30 years? If you think that it will look pretty much the same, you may be missing the boat.
4. Organizational – Risks arising from not clearly defining roles and responsibilities, not demonstrating the values of the your police department or not having monitoring processes in place. In a nutshell, we must be concerned with PEOPLE, POLICY, TRAINING, SUPERVISION and DISCIPLINE. Let me give you some highlights on each of these issues that oftentimes are the root cause of so many tragedies. I will address a small portion of the people component when we talk about performance evaluations later today.
5. Operational – How do we manage the risk of a specific task, incident or event? How do we manage the risks involved in this particular employee termination or employee threat of suicide? How do you manage the risks associated with a specific pathogen incident? Again, I must emphasize the importance of Recognition, Prioritization, and Mobilization of the high-risk, low-frequency, non-discretionary time tasks and the importance of daily training on these *core critical tasks*. We will address this later today when I focus on harassment issues in law enforcement.
6. Information – We make decisions based on information. How do you know the information on which you are basing your decision is accurate and has not been vetted by someone for his or her own advantage? How do you separate the value information from all the data? In many organizations I have consulted with, I see that personnel are trained on how to do specific tasks – but very few organizations teach their personnel how to think. I strongly recommend training for all personnel on critical thinking skills, particularly on the specific tasks in a given job that have the highest probability of ending up problematic. Be aware of the dangers of ignorance, complacency and cognitive bias. Again, I stress the importance of decision-making training – perhaps even developing a National Decision-Making Model for all law enforcement personnel.

7. Human Resources – Risks arising from the myriad of issues involving personnel. This may well be the most expensive family of risk you face. Put a checkmark next to this one as it is causing us a ton of grief and needs your attention when you get back to work. If I were running a police department, I would not allow any supervisor, manager or executive to make an employment law decision without first consulting with competent human resources personnel. All employment law is discretionary time so let's take the time to transfer the risk to those who do the task at the highest frequency.
8. Technology – This is the fastest growing family of risk we face. I have major considerations about hacking, malware, ransom ware, software, equipment purchases and updating, employee knowledge and training, terrorism, social media, equipment failure and many other issues.
9. Financial and Reputational – Risks arising from improper budgeting, forecasting and expenditure controls, including contracting, asset management, internal audits, improper salaries, theft of cash, misappropriation of resources, misuse of overtime and poor revenue oversight. We must be very concerned with anything dealing with money. Is your CFO really a CFO? Does she/he actually have any background in finance – or does this person just test well on promotional examinations?
10. Political – All of your personnel should stay out of the fray of politics. Please be careful in your dealings with other elected officials – there is a lot of risk involved here. Also, your department mission should not be impacted by which political party is in control of the State.

So, your take back to work assignment is to identify the three (or if you are ambitious the five) greatest risks you face in each of these ten families and then ask – “What control measures (systems) do we have in place to address these identified risks?” And please remember this is an ongoing process.

Let's move onto some thoughts on performance evaluations. Here is a summary of my four-hour class on this topic – Graham's Rules for Improving Performance Evaluations.

### **GRIPE #1 - Understand the purpose of employee evaluations.**

Performance Evaluations are a useful police department management tool. Performance Evaluations can improve morale of employees who meet performance expectations and provide fair warning to employees whose performance is unsatisfactory and where improvement is needed for them to meet standards.

I believe that performance evaluations are critical to a well-run organization. Only a very few public organizations are subject to laws that require a performance evaluation be

prepared for employees. Like the private sector, performance evaluations in most public sector organizations are optional.

With this in mind, remember that even though performance evaluations are an excellent management tool, if your organization is not committed to doing them correctly, then you will probably be better off without such a process. Ill-prepared performance evaluations are worse than no performance evaluations at all. Poorly prepared or inaccurate evaluations can come back to haunt you in ways you never imagined, including discipline hearings, arbitration, grievance procedures, or civil court downstream.

Preparation of a performance evaluation is a task that you are charged with doing, and it is high risk in nature, and like any other high-risk task, it needs special consideration. Again, the Five Pillars of success apply to performance evaluations.

If you want them done right, you need good people preparing them, a validated policy to show good people how to do them, training (initial and ongoing) to ensure good people know how to do them, supervision (this means management in this case) actively involved in the process, and when the process is not taken seriously, that needs to be addressed through the discipline process.

## **GRIFE #2 - Get a policy regarding evaluations.**

As with any other high-risk task, your organization needs a policy as to how this process is done. The policy needs to be organization specific, and because of the high-risk nature of the task, this policy needs to be reviewed by competent counsel on a regular basis. The purpose of any policy is to set standards and to maintain a consistent approach between multiple people who are doing the same task.

Your organizational policy in this regard needs to be specific as to each department within your government entity. A one-size-fits-all approach does not work here. Every municipal/county/state department has different roles and responsibilities. Well-prepared job descriptions and performance goals and expectations are an essential precursor to the evaluation process. These have to be identified well before any attempt can be made to evaluate performance.

Additionally, observations by supervisors and managers of employee performance throughout the rating period need to be collected and saved via appropriate documentation. Your policy needs to include direction on how to analyze this data to establish a rating, and as much as possible this portion of the process needs to be highly objective.

Do not make the policy and preparation of the performance evaluation too complex. All that is necessary are three rating categories. Most of your people will "Meet Standards." There is nothing wrong with an employee being evaluated as meets standards. Occasionally you will have some employees "Exceeds Standards." Similarly, you have some people whose performance "Does Not Meet Standards." If you want to rate

someone in either the exceeds or does not meet standards range – you need specific articulable facts to justify this rating.

The policy should include direction on how to gather necessary information from the rated employee and other sources, how to prepare the document, and how to finalize the document. Finally, management review of the prepared document is essential, preferably before the document is reviewed and signed by the rated employee.

This management review can include auditing the prepared document for accuracy, meeting with the rated employee, discussing their performance, looking for potential problem areas, and verifying level of knowledge regarding *core critical tasks* your personnel face in their specific job description.

This is also an excellent time to check for certificate and licensing validity (if applicable); ask employees to make sure their beneficiaries are up to date; check on other required certifications; and ask if there are any *problems lying in wait* that management needs to be aware of. Allow me to spend some time on a document I put together 30+ years ago – APE – that may be of some benefit to you and your organization.

### **GRIPE #3 - Select people to be supervisors who are capable of being honest with employees.**

Some performance evaluations are properly prepared. However, one of the biggest problems that permeate law enforcement organizations around America is that many performance evaluations exaggerate employee performance. We like the people we work with and around.

This bias can pose a major problem for you during the performance evaluation process. To be sure, some supervisors use the process inappropriately to get even with people they do not like, but much more frequently the performance evaluation overrates employees.

Overrating occurs in two ways, intentionally and negligently. Overrating occurs for several reasons, but can be prevented by review of the process by informed managers. A lot of employees are overrated because supervisors lack the spine to be honest with the person they are rating.

Some supervisors want to be a friend to everybody, some believe that rating people high will improve their performance, some believe that they have to rate people as they have been rated before. Each and all of these reasons for overrating employees can cause you a lot of grief.

With all of this in mind, when you are promoting people in your organization, make sure that one of the things you look for is the future ability to be honest with employees including during the rating process. Finally, ensure you have a training program for all supervisors and managers so that everyone understands what evaluations are about, the

consequences of doing them wrong, and most importantly, how to do them properly. It is the right thing to do.

**GRIPE #4 - The process should not be a secret.**

After deriving a good policy and ensuring that you have good people doing the rating and reviewing of the evaluations, make sure that all employees are aware of how the process works including how data is collected and analyzed for use in the evaluation. Good people (and I assume you have them in your organization) will rise and fall to your level of expectation.

The evaluation process has to be explained in your employee guide so that they will know how their performance will be evaluated. Keeping the process secret (or creating the perception that it is secret) will only cause future problems including less than optimum performance and low morale. Additionally, when employees know each step of the process, they are better motivated to meeting the standards that you have set.

**GRIPE #5 - Before you put pencil to paper (or fingers on a keyboard), think.**

As mentioned above, performance evaluations are a high-risk task. However, they are also discretionary time in nature. This means you have a lot of time to think before you perform the task. Use this time to review the policy of your organization and make sure you understand what you are doing. Develop an action plan as to how you are going to prepare this document.

Further, utilize your discretionary time to read the last evaluations of the involved employee and if they had problem areas, or were given direction on areas needing improvement, check to see that the employee followed the recommended direction.

Finally, use your discretionary time to analyze their performance during the rating period and to talk to other supervisors and get their input regarding this employee's performance. This discretionary time can be used to have a pre-evaluation discussion with the involved employee to discuss what you are doing, your preliminary data analysis and get his/her feedback and input regarding his/her specific performance.

After you have done this and prepped a rough draft, you can use this discretionary time to check with your manager or even your personnel section and get their input into your efforts. As a management tool, this review by a manager may prevent some of the common errors made in the evaluation process.

However, remember you are preparing the document so weigh the comments of others with what your knowledge about the involved employee is.



**GRIPE #6 - Be specific during the evaluation process.**

Overrating (and underrating) employees can cause big time grief for you, the involved employee and the organization. There is a tendency to overrate employees, because it is easy and we want our people to do well. Therefore, it is important for you to be specific. If you want to rate an employee as excellent, that is fine so long as you have SAF (Specific, Articulate Facts) to support the high rating. The same is true with rating an employee low.

The specific, articulable facts are drawn from your personal observations, the observations of other supervisors, and other documentation generated during the rating period. Beware of some of the common effects that may alter your good clear thinking. These include the halo effect, the harsh and lenient effect, the central tendency effect, the similar to me effect, the first or last impression effect and the stereotype effect. Each of these effects can cloud the judgment of the evaluator, so recognize them and avoid them.

**GRIPE #7 - Remember the importance of accuracy.**

Accuracy is essential in a well-prepared performance evaluation, particularly if the evaluation has negative elements that may impact future employment or promotion. The easiest way for an employee to challenge a negative review is to demonstrate that your specific, articulable facts are incorrect.

This can be prevented by appropriate data collection (I recommend daily collection and documentation of behavior) and analysis during the evaluation process, and by a serious pre-evaluation discussion with the employee where you discuss with him/her your thoughts regarding their performance and allow them to respond as to the accuracy of your observations. The integrity of the process is dependent on accuracy and objectivity.

**GRIPE #8 - Always proofread your documentation.**

After preparing the document, and prior to taking it to your manager for her/his review, double-check it again for accuracy. Minor errors can cause major problems, and your manager will hopefully be looking for these to prevent such problems.

One common mistake on a free-form evaluation process is where the rater utilizes a word processor to prepare the document. If you do so, please make sure you start with a blank screen so that there is no possibility that you will include elements from the last document you generated in this regard.

Also, canned phrases taken from a canned phrase data base are easily recognizable and do not reflect well on you as the rater. Anyone can go to a master file of prepared phrases that have passed management scrutiny and cut and paste them into this new document. This is the lazy way and your employees and organization deserve better.

### **GRIPE #9 - If you're right, don't change it.**

This is a very tough area and can put you as the rater in a very awkward position. You prepare an honest evaluation, and you are directed by your boss (or your boss's boss) to change the ratings either up or down. Before you lock your heels in and lose your grip, analyze their request and utilize your discretionary time to think it over. They may be right and you made a mistake.

Or, they may be utilizing information that you were not aware of (aren't you glad you did not already have the document signed by the employee?). If the request is in good faith, and is a difference of opinion, then it may be in your best interest to follow their guidance.

However, if the recommended change is wrong and against the spirit of your policy, then you should make your feelings known. This is a personal call and is dependent on the strength of your position relative to your boss, but if you change a document to reflect performance traits that you know did not exist, you may be setting yourself up for bigger problems downstream.

### **GRIPE #10 - Learn from and share your experiences.**

As with any other task, the more you do it, the better you will get at it. As you learn, share your knowledge with your peers, and if your new-found knowledge is not in the policy of your organization, make the appropriate recommendations to get the policy updated to reflect the better way to do evaluations. Finally, performance evaluations may well be the most important document you generate for your employees, so take the process seriously, and everyone will benefit.

Let's move onto our next topic – some thoughts on job-based harassment. When I was a brand-new lawyer in 1982 I got involved in many cases involving race harassment, sexual harassment, gay harassment, gender harassment, religious harassment and other forms of inappropriate behavior in the workplace. I thought that these problems would dissipate over time – and my gosh my thinking way back then was so naïve. Here we are in 2019 and harassment is still a huge issue in America.

In the news over the last year are the stories about harassment in the movie industry and in the military and in major corporations. Harassment is a huge problem in law enforcement agencies around our nation – including right here in Texas.

I have some time to get into the details regarding what can be done to address this issue proactively – but it all gets down to a basic concept that you learned when you were a kid: dignity and respect!

Unfortunately, these two words are disappearing from our society. Please, thank you, holding doors for people, treating elders and professionals properly, and just plain being nice have just about vanished.

Many times, I meet people outside of my former profession and they complain about some cop not treating them right. My question is "Where did the cop learn that behavior?" We did not teach our people how to be rude and uncaring. Like anything else, it is learned long before they come into our profession.

We must all work within our families and our teams at work to improve the way people are treated. It is critical that we revisit some basic rules of decency. Go back to when you were 5 years old. It doesn't matter where you were then. All of your parents gave you a lecture when you were a kid that went something like this:

1. Treat people the way you would like to be treated. This is the golden rule and oddly enough, it still works. How would you like a loved one treated in this type of incident?
2. A smile goes a long way and it is international in nature. It is not a sign of being weak, it is a sign of being nice.
3. If you don't have something nice to say, don't say it. Being a wise guy with rude or crude comments is not a good idea. Also, if proper and tactically sound, try to explain to people why you are doing what you are doing.
4. Listen at least as much as you talk. People want to be heard about their specific problem or issue. Slow down and listen to what is being said to you. This might have been the thousandth burglary call you have handled in your career. To the person who just had their house been burglarized – this is a very big deal to them and if they get a hint that it is not a big deal to you, that can be a problem. Remember – this may be the only contact they ever have with Houston Police Department. Please make it count!
5. Don't make promises you can't keep and keep the ones you make. Not only is this being decent, but also it will keep you out of legal trouble.
6. Keep your hands to yourself unless you are required to touch someone. So many problems start when we escalate to a touch or push.
7. Apologize when you really do make a mistake and try to fix it now. Study after study shows that this works better than stalling and not admitting fault. Again, how would you like to be treated if you were on the other side of the issue?
8. You get more flies with honey than you get with vinegar. Be nice!

All public safety personnel have got to be the vanguard in bringing back dignity and respect in society. These ingredients will never be realized externally with our great citizens unless and until dignity and respect is practiced in internal operations. With this in mind, the elimination of harassment, bias and discrimination must occur immediately. No one is asking you to fall in love with everybody you work with and for, but you are being asked to treat each other with dignity and respect.

This is a big deal because when people in the workplace perceive they are not being treated right – they have all sorts of options available to them. Allegations of harassment, bias, and discrimination have become hot topics in most employment operations. In addition to the cost of litigation, possible damage awards or settlements, harassment, bias and discrimination take a high toll on the morale of any workplace.

When allegations are made, both the accused and accuser face monumental challenges that adversely impact the effectiveness and productivity of the workplace. It is my belief that these issues can be eliminated if a five-pillar approach is taken. The five items necessary for the elimination of this issue are:

1. People (Getting and keeping)
2. Policy (Derivation, review, knowledge)
3. Training (Initial and ongoing)
4. Supervision (Pre-incident)
5. Discipline (Prompt, fair and impartial)

Everyone benefits from having a sound, professional work environment. Getting good people and having a well-written, comprehensive, and strong policy which is regularly reviewed for accuracy with any changing laws is the start.

This policy has to be covered with all personnel on a regular basis, and the organization must ensure that the policy is known and being followed through adequate supervision. Finally, deviations from established policy must be reported, investigated, and, if necessary, result in prompt and fair discipline.

Remove any of the above five pillars, and disaster can and will result. Remember, most things that go wrong in life are highly predictable and, if predictable, it is preventable.

Harassment, bias and discrimination are not exceptions to this rule. So, what do you really need to know so that you can go back to work and address these potential *problems lying in wait*?

A. Nature and Scope of the Issue:

1. Not limited to this time, place or occupation
2. Past history in the United States (Prior to World War II)
3. Creation of EEOC and Title VII - 1964 - Revised 1991 - A work in progress

While the laws may seem confusing, it is important to note that we as a country have only been involved in this type of litigation since 1964. 55 years in the eyes of the law is a very short time, and truly, the FCRA is a work in progress.

Having said that, there are already some definite certainties regarding this topic. Certainty number one is:

B. Employee Harassment: INTENTIONAL vs. NEGLIGENCE

*Intent* vs. *Impact*

The number one defense I hear when people get in trouble for harassment is, "I did not mean anything by it. It was just a joke." This argument gets you nowhere. Whether accidental or intentional is not the issue (except when determining damages).

The courts will find harassing behavior if it substantially interferes with an employee's ability to do their job. The defense "I didn't mean anything by it" or "It was just a joke" falls on deaf ears. Look for the impact on an employee, not the intent of the actor.

If you are a funny person, keep it away from protected class status issues. There is a lot of funny stuff that has nothing to do with race, sex, disability, religion, sexual orientation and the other recognized protected classes.

The second certainty is the types of harassment there are that impact the workplace. The courts identified these way back in the early days of litigation, and they are the same today. What was that guy's name? Oh yeah, Dr. Zeller. There are no new ways to harass people.

The types of harassment were and are:

**1. Quid Pro Quo**

THIS FOR THAT - You do this for me, I'll do that for you.  
It is 2019 and it still goes on in many workplaces.  
Often portrayed on TV and in movies as it is sensational.  
A lot of the allegations against Weinstein, Spacey and Wynn were in this area of concern.

Still occurs in public sector including law enforcement operations. Usually done by people obsessed with power, and their ability to control others.

RCF # 1 – Don't hire or promote losers

RCF # 2 – Don't date or attempt to date people who work for you

## **2. Retaliation** - All classes protected

A cause of action exists under Title VII and state law for discipline, discharges or other forms of retaliation that result from employee complaints about harassment.

Retaliation also happens to relatives, friends and witnesses. Courts despise any effort at retaliatory behavior.

RCF # 1 – Don't hire or promote losers

RCF # 2 – Ill-prepared performance evals are setting you up

## **3. Hostile Environment** - All classes protected

Behavior or behaviors in the workplace that substantially interfere with an employee's ability to do their job. This is the most often cited form of harassment. It can be a single incident or a series of incidents.

Recent examples of cases involving hostile environment.

Unless you are a woman, there is no need for you to be in the women's locker room or bathroom.

Spouses, girlfriends and boyfriends should not be in your workspace.

Sexting is inappropriate, many times illegal, and very stupid.

RCF # 1 – Supervisors and managers not doing their jobs.

RCF # 2 – Supervisors and managers who try to do their jobs but get no support from management and executive personnel.

Almost every claim regarding harassment contains elements of hostile environment. If inappropriate behaviors that constitute a hostile environment can be eliminated, all workplaces would be much better off in this regard.

If you take the time to read the consequences that occur when hostile environment is alleged, you will see the same allegations over and over again.



A person or group of people will allege that the workplace is filled with inappropriate behaviors involving their protected class status. "In all 50 states, federal law makes it illegal to discriminate based on: race, color, national origin, religion sex (including pregnancy, childbirth, and related medical conditions) disability, age (40 and older), citizenship status, and genetic information."

Once again, if you can predict what the claims and lawsuits will say, you can eliminate the behaviors that give rise to these allegations.

2. What is inappropriate behavior? - This is a very tough question. It may be a single event, or a combination of events by a person or multiple persons over a period of time.

Here is my risk management approach to this very important issue. Again, it involves thinking up front. Dr. Archand Zeller (great risk manager of the 1940s) was right: There are no new ways to screw things up. Once we recognize that, we can do something up front to prevent problems.

That something for this issue is **CATSINRO**.

Definition - **CATSINRO<sub>plus</sub>**

Comments

Actions

Things

**WELCOME**

Sexual

In

**vs.**

Nature

Reasonably

**UNWELCOME**

Offensive to anyone

1. Verbal conduct, including epithets, derogatory comments, rumors, slurs, code words, sexually foul language, inappropriate terms of endearment, inappropriate jokes, etc. Your First Amendment rights are seriously limited at work. Please think before you say something really stupid. I could make a list a mile long, but you get the drift. For the stupid people in here today – just shut up!
2. Physical conduct including assault, impeding or blocking movement, stalking, leering, touching, rubbing, etc. Here is a thought: Keep your hands to yourself unless there is a sound business necessity. I don't know how to better say this. Don't be going around touching people.

3. Visual harassment, such as derogatory posters, cartoons or drawings, e-mails, faxes, computer transmissions, porno, etc. There is a permanent record of everything on a computer. You can play all you want on your home computer, but this is not appropriate at work. If you are a boss, your role in audits and inspections is critical here!

And please remember all of the problems that come out your participation in a social website. For the life of me I cannot see the benefit of having a presence on Facebook – but I know that there is a huge risk. Please think before you post something stupid.

4. Requests for sexual favors, including unwanted sexual advances and suggestive behaviors, repeated requests for dates, suggestions that evaluations are related to future sexual activity, etc. Also, be aware of the subtle behaviors that have the same intent.

While all of this appears to be very complex and too much to remember – here is a simple approach. It all gets down to dignity and respect.

Here is another thought for you to consider. The number two defense I hear when people get in trouble for harassment is “But, I thought it was welcome.” This thinking can get you in a lot of trouble. Remember, what you may consider welcome may in fact be unwelcome. What you think is welcome today may be unwelcome tomorrow. What is welcome between two – might indeed be unwelcome to another person who overhears the comment or sees some activity between you and another person.

The only rule that works is keeping it all out of the workplace. This is the best course of action to eliminate potential problems. Zero tolerance should be our goal, as anything less will allow inappropriate behaviors into the workplace.

Also, here are some thoughts on accountability. If someone says or does something that you find offensive (whether or not is directed at you), put them on notice that you feel the behavior is inappropriate. If you don’t, it will only continue and so will the resultant problems that come from that behavior.

While there is no law or policy that requires you to act, this is an excellent technique that has been successful in stopping inappropriate behaviors.

Now for those of you who may think this is not a serious issue, here are the remedies (consequences) for inappropriate behavior that negatively impacts the workplace.

D. What are the available remedies for the aggrieved person?

1. EEOC – Federal. You do not want to be investigated by any federal agency. They are no nonsense and have huge budgets.
2. STATE REMEDIES – Texas Workforce Commission
3. CRIMINAL FILING – Some forms of harassment graduate to criminal behavior.
4. CIVIL LAWSUIT AGAINST YOU PERSONALLY for:
  1. Abusive, wrongful or constructive discharge
  2. Breach of employment contract
  3. Intentional torts Including:
    - a. Intentional infliction of emotional distress
    - b. Malicious interference with a contract
    - c. Assault and battery
    - d. Defamation (rumors)
    - e. Invasion of privacy
5. INTERNAL INVESTIGATION

What is the policy on investigations in your organization?  
Does it allow for termination for aberrant behavior?  
What has been past history in your organization?

**A thought in this regard: If you are terminated from your employment here at Houston Police Department because of your participation in harassment, bias, or discrimination, you have not just been terminated from your current job. You will have great difficulty being hired again, by anyone. What other law enforcement agency will take the risk of hiring someone who has been fired from another police department?**

Bottom line: It all gets down to thinking up front. And before you dismiss all this as the ramblings of some psycho chippie trying to fill some time, remember this: In every single last harassment case I have been involved in, both as a union rep, an attorney, and a supervisor/manager in the workplace, sooner or later the person in trouble says in all sincerity, "I wish I hadn't done it." Smart people think up front, before they do something that is going to cause them tremendous amounts of problems.

Before you say or do something involving sex, race, religion, sexual orientation (or any other protected class), please take the time to think: Is this a comment, action or thing, sexual (or other protected class) in nature that reasonable people would find offensive? If your answer is "Yes" or "I'm not sure," your best course of action is to not participate in that behavior. Eliminate the risk by not participating in that particular behavior.

If you have any doubts as to whether or not your intended behavior is appropriate, here is a simple test. Ask yourself if you would make that comment if your significant other was present, if your child was present, if *60 Minutes* was filming you, or if your boss (who does not like you) was present. If you answer is "No," then you probably should not be participating in that specific behavior today.

Thinking up front pays off. No one can control your attitudes, but behaviors that negatively impact the workplace have to be eliminated. Once again, all you have to do is monitor your behavior (and if you are a supervisor or manager – you must pay attention to the behavior of your personnel), and do not participate in inappropriate behaviors that impact the workplace negatively. Remember, you are the best risk manager you have, so think up front and don't be stupid. And for those of you who think this is not a big deal – please rethink that!

#### E. Who pays the damages?

1. Issues involving personal liability - The joy of being an employee.
2. Discussion of punitive damages
  - a. Fraud, oppression and malice
3. Supervisory and management responsibilities
  - a. The primary mission of a supervisor/manager is to enforce organizational policy. If a supervisor or manager is aware of a deviation from established policy, it must be addressed immediately, not because of a complaint, but because of the deviation from established policy.

Supervisors should:

1. Talk in private.
2. As much as possible, maintain confidentiality.
3. Contact the professionals at Personnel or HR for their advice and direction.

Hint: Human Resources (or Personnel) does this at a higher frequency than anyone else. If you become aware of a problem or an issue, please get it to the people who do this task at the highest frequency. Trying to handle it yourself can be a ticket for disaster. You are out of your league here and may be setting yourself and your organization up by not addressing the issue appropriately. When in doubt, get hold of Human Resources or Personnel for their advice and direction

F. POLICY OF HOUSTON POLICE DEPARTMENT

G. TECHNIQUES FOR ELIMINATION

People I believe you have them in your district. If you are ever hiring employees, please weed out the losers up front.

Policy Houston PD has an excellent policy.

Training This is up to you. Regularly review your policy.

Supervision Bosses must behave like bosses. If you are that supervisor, you must enforce the harassment policy even if no one complains about inappropriate behavior.

Discipline Rules without enforcement are just nice words.

H. WHAT SHOULD THE AGGRIEVED INDIVIDUAL DO?

1. Inform party of the problem - have a witness!
2. If actions continue - contact any supervisor, manager, or Personnel.
3. Be aware of policy and time deadlines.
4. Be aware of the consequences for filing a false or frivolous complaint or lawsuit.
5. Keep notes!

Let's move onto some thoughts regarding Customer Service. When I address this topic with members of law enforcement organizations, I am often greeted with "Well this may apply to some jobs, but as a (insert your job description here) it is not applicable to me."

If you are of that belief, hopefully I can change your mind regarding this line of thinking.

I dread getting the jury summons – and not because I don't want to serve on a jury. But the lack of service to people who serve as jurors is appalling in my county. Let's start with the initial phone call to the Jury Commissioner's office to get a change of date. I have personally experienced long hold times, disconnections, rude call handlers and many other problems.

Now let's fast forward to the date of jury summons. Parking! Let's see how far away we can put the jury pool. Court Security personnel! Let's see if we can find the most out of shape, rude, "counting-the-days-until-I don't-have-to-do-this-S%#&-anymore" people in the sheriff's office to handle that job.

Some of the potential jurors have never been through screening before and they don't understand the process. All the yelling and screaming and rude behavior is not going to make them understand the process if they have never done it before. What is rather ironic is the uniform worn by this rude security deputy may well be the same uniform worn by a street deputy who is testifying today in a criminal case. That baggage may come back to sway the opinion of the street deputy's testimony.

And I could go on and on regarding what goes on in the courtroom proper – from complete jerk prosecutors to judges who think they can say anything they want to anyone and cut people off while they are talking and so on and so on.

I would like to think that my experiences are isolated, but when I talk to people around America – they have the same experiences. So, let me see if I have this right. Most Americans have been paying taxes their entire lives. They have never had any experience with the criminal justice system.

They are trying to do the right thing by accepting the jury summons and not pulling the "I can't serve because of my bad back, and my need to urinate every six minutes, and I suffer from some alphabet soup disease excuse" – nope these are good Americans who are trying to participate in the process – and they are not treated properly.

And God help you if you say anything – clearly you are a troublemaker who needs to be dealt with. And please recall that this may be their only experience with the criminal justice system in their entire life!

Please do not think that they will keep their anger private. They will tell five people who will tell five people who will tell five people – and all of a sudden government has an approval rating of 19% - and that is one of the stories in the paper recently as I prepare these handouts.

Here is a thought for you to ponder: Our public (and remember that you are a member of the public) is fed up with a lack of customer service, and they are not being silent about



it. They vote, either with their feet by abandoning organizations that do not provide service, or in a polling booth (or jury) when public safety does not take it seriously.

Too many organizations stress the importance of customer satisfaction. What does that mean? Satisfied customers may come back and do business with you again. I don't want satisfied customers. I want loyal customers because loyal customers will come back – and they will bring others back with them.

So how do create a loyal customer base? Of course, the executives in the organization need to know who their customer base is – and all the things they need to do to make sure that we have sufficient resources in place to address the needs of the customer base. But I think a lot more can be done from the bottom up. Every contact made by each of our employees is an opportunity to create loyal customers.

My Customer Loyalty program also has three principle components. They are doing things right, treating people right, and adding in the WOW factor. My goal over the next hour or so is to show you why this is so valuable to you, your organization and our profession, and give you some extra tools to make sure that creating customer loyalty is part of every incident you handle. Let's take these one at a time.

## **A. Getting the right thing done the right way the first time.**

I have beaten this to death with private and public sector organizations for the past 40 years – and it imperative that the tasks, incidents and events our people handle get done right. Most of what you do, you do right. In my 2017 visit to HPD I gave you some thoughts about the dangers of complacency, fatigue, distractions, hubris, risk homeostasis and the importance of training regularly for high-risk/low-frequency events.

## **B. While treating everyone involved with the highest level of dignity and respect possible under the circumstances.**

The basic rule we spoke of earlier (page 15 of these handouts) apply directly to this topic also.

## **C. Add in the “WOW!” Factor whenever you can.**

So, what is this “WOW!” factor? It is simple and it was developed by firefighters. Your goal should be to get everyone you contact to be saying WOW when they finish the contact. Chief Brunacini (Phoenix FD, now deceased) had this idea decades ago. His logic was as follows. If we can create five WOW experiences per day that are witnessed

by 10 people who will then tell 10 people about it, we will have 500 people a day who think we are pretty neat.

That is 3,500 per week or 14,000 per month or 168,000 per year. In 20 years we will be able to positively influence over 3 million people. That will be the entire population of Phoenix by then and we will have a loyal customer base. And all he predicted ended up being accurate. When Chief Brunacini retired in 2006, he had the full support of the citizens of Phoenix and got everything he asked for.

Again, please do not dismiss this as the ramblings of a psycho ex-cop trying to fill time. I am not naïve, and I know that some (possibly many) of our contacts will never say, "WOW!" regardless of what you do for them. However, there are some (perhaps many) that will be surprised that you took the extra step to help them in their particular problem.

### **Here are some areas where you can create WOW.**

Initial greetings with people you contact - Courtesy, dignity, respect, are the start to every successful contact. "How are you doing today?" is a nice start on most non-confrontational incidents. Find out what is going on, say please and thank you, answer their questions and advise people of additional services available. If it was your mom or dad involved in this event – how would like them treated? Give these behaviors a try. By the way, if it were you on the other side of the counter, what would make you say WOW?

Telephone issues – Answer in a timely manner, be understandable and polite, listen, direct calls to appropriate parties, properly use the hold button, and practice call terminating techniques. Follow through when you transfer a call to another more appropriate point of contact. It is important that you regularly check your voice mail and respond to calls made to you. If you are going to be absent for a period of time, put that on your message and give the caller another option. Also, we all need to be 24/7 on the Internet just like most of the people in your community are.

Vehicle Operations – So much of public opinion is developed by the way you behave in the view of the public, particularly in the way you drive your department vehicles. Please, drive within the law and policy, keep your equipment clean, use the seatbelts and turn signals (that is the little stalk on the left side of the steering wheel – push up when making a right turn, and down when making a left turn), acknowledge courteous driving behaviors, and park in designated spaces. When someone gives you a break in traffic, acknowledge this courtesy with a wave or other gesture.

Response to calls and other events – Timeliness is essential. If you have made an appointment, be there on time. If something unexpected comes up, then be sure to call and inform the party you will be late. Nothing angers people more than being delayed. They are as busy as you are. If time allows, remind me to tell you about the building permit processes in my city of residence, and why contractors add in a penalty for doing work in the city because of the complete lack of customer service in the building department.

Following up after the initial contact works very well. Many organizations have proven this. Check after the contact (within 24 hours) to see if there is anything else you can do to assist the person you contacted earlier. You will be amazed at what you hear from the people you contact. Please do not use this opportunity as a justification to follow up with a person for your personal gain.

Dealing with bad customers. To be sure, some of those you will contact are problem people who will never be loyal or a raving fan. Having said this, it is still good to treat them as well as you can under the circumstances. They might be a witness to your behavior someday. Or you might be able to turn him/her into an informant. Or your decency might (and I agree this is rare) actually help change his/her life.

I know I talk too fast, but I have to as this is a very short class. Earlier today, I asked if you have ever had a negative experience with an organization that made you so angry that you vowed you would never do business with that organization again. And if I recall correctly, almost every hand went up (somehow, I knew that would happen and that is why it is typed in the handout material which was prepared several weeks ago).

Now I will ask a second question: How many of you in here have had a positive experience with an organization that made you say, "WOW!"? My guess is that several hands will go up when this question is posed.

After we get done today, take the time to do the following exercise. Take a moment to think and list the three most negative contacts you have had with any organization. Identify the specific behavior that really made you mad and list that behavior on the left lines below.

Now, think about the three most positive contacts you have had with any organization, and again list the specific employee behavior that made this contact so great.

**NEGATIVE BEHAVIORS**

**POSITIVE BEHAVIORS**

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

3. \_\_\_\_\_

As simple as it seems, don't participate in the behaviors you have identified on the left side above. Simultaneously, do the things that are listed on the right side. Take a look at some of the lists of your fellow workers. Talk about the things that you can do to create the loyal customers that are so essential for our continued success.

If you do not feel that this is your job, then perhaps you have chosen the wrong line of work. If you are taking a check from a government agency, you work for the people in that entity. This job is a service job and you are a public servant. It is so darn easy to make every contact an opportunity to create a loyal customer for life. Your imagination (within the confines of your policy and procedures manuals) is the only limit.

Be nice and use your head to create WOW with as many people as you can. They are all jurors, voters, and members of our great public. You have a key role here and taking this seriously will have major benefits in the future.

Let's wrap up our brief time together by taking a look at The Top Ten Ways Cops Get in Trouble.

I have been working on this program since 1975. For those of you who I have not ever met, I was hired into the CHP in 1973. In 1975 I became a union rep – and as such had to defend cops in internal administrative hearings.

I got pretty good at this and started helping out cops from other law enforcement agencies. In 1982 I promoted to sergeant and had to get involved in the CHP discipline process.

In that same year I became a lawyer and as such I had all sorts of cops from all sorts of different agencies coming to my law office with their various problems – many of them job related. Later I promoted to captain and as such got an overview of the problems that CHP officers faced. And since 1980, I have been on the lecture circuit – and receive a lot of information through that conduit.

Today, I am still busy studying our profession – focusing on what you can do up front to prevent problems. As the co-founder of Lexipol I know quite a bit about how cops get in trouble.

So, based on what I have seen and experienced over the last 40 years, here is my top ten list of things that get cops in trouble. How do cops die? How do you get hurt? How do you get sued, fired, indicted, or embarrassed? This is my list – and you can disagree with the contents.

But hopefully, this will make you think just a bit – and give you something to take back to your specific workplace to better improve your operations and the safety of your personnel.

In no particular order, here are some thoughts for you.

**1. Vehicle and Roadway Operations**

Care and maintenance issues – Transmission, brakes, overall care

Pre-shift inspection checklists

Perceptions of the public including jurors and voters

Drive it like you own it

Logbook considerations

High risk transport activities

MDT/Cell phone usage while driving

Seatbelts and how they work – and indeed they do

Speed issues – Why do cops drive fast?

Use of emergency equipment – Legal requirements

Security of weapons – Concealment vs. Security

Home storage considerations

Right side vs. Left side activities

Roadway incursions – Sadly a daily event in our profession

[www.respondersafety.com](http://www.respondersafety.com)

The danger of U-turns.

Standing between vehicles – Never, ever do that!

Situational awareness – There is more to life than the MDT

**2. Harassment Issues**

Still present in 2019 and in the news a lot

Policy Considerations

Is your policy up to date?

Does it address all protected classes?

Does it allow for multiple avenues to report problems?

How often is it covered with your personnel?

#### Types of Harassment

Quid Pro Quo – What really causes these problems?

Retaliation – What really causes these problems?

Hostile Work Environment – What really causes these problems?

#### APE Considerations

Diversity considerations – Why is this so important?

### **3. Integrity Issues**

Hiring standards – Edwin DeLattre – *Character and Cops*

Integrity issues

You lie, you die – This is the new rule

Recent cases from around our profession

### **4. Use of Force Issues**

Personal physical fitness issues

Policy considerations

Training – Initial vs. Ongoing

Injuries during training

Escalation and defusing scenarios – Exactly why are we here?

### **5. Custody/Detention Issues**

Deprivation of liberty considerations

Be a fact gatherer – and not just facts for prosecution

Be aware of the dangers of cognitive bias

Think before you start depriving people of their liberty



It is as important that we prove someone did not do the crime as it is to prove they *did* the crime. If you are not certain, gather your facts and get them to the prosecutor. Most of the time you do not have to make that arrest today.

**6. Report Writing/Documentation**

Discretionary time task

Note taking and fact gathering revisited

Prosecution vs. City Attorney needs

Native format law of 2007 – Do you understand metadata?

Unintended consequences of the word processor

**7. Off-Duty Behaviors**

Social websites. Please think this one through.

What is the benefit?

What is the risk?

Terrorists, criminal street gangs, organized crime

Trust me, the risks outweigh any benefit

This is a very hot topic

Alcohol/Sex – If you drink – do so responsibly. If you are sexually active – please be responsible.

Weapons – Please think this one through. I like the concept of cops being armed off duty – but please recognize the risks involved in off duty carry. The only person who needs to know you are armed is you. Please never carry if you are drinking and/or having sex.

Alcohol/Sex – Don't have sexual relationships with co-workers or informants, kids in your DARE program, explorers, victims of crimes, applicants, trainees, arrestees, animals, elected officials, or anyone else for that matter.

Identification issues – If you are taking action, ID yourself quickly and often. And never take any action if you have been drinking.

Alcohol/Sex – Don't date co-workers – particularly married ones. And if you have been drinking – think before you say or do something stupid to anyone.

Action vs. Witness considerations – Be a good witness and only take action when absolutely necessary. And if you or your people take action – make sure you can later establish you were course and scope if necessary.

Alcohol/Sex – Don't misuse personal or department (or anyone else's) electronics particularly if you have been drinking. Stay off of social media if you are drinking or having sex.

Domestic Violence – If there is any indicia of violence in your personal relationships, get out now before you lose your job.

Alcohol/Sex – Your best bet is participating in these activities at home and out of view of anyone else.

Gambling – Please be aware of all the risks here. My friends in organized crime operations tell me that cops are regularly being exploited to erase gambling debt.

And in case I have not mentioned this, alcohol/sex. I will do anything to keep you interested – but when I have cops in my law office in trouble – it usually has something to do with alcohol and sex – and too often in combination.

#### **8. Decision-Making Issues**

We teach our people how to do things. But too often we don't teach them how to think things through.

The value of systems and checklists

The value of discretionary time – Blink vs. Think

#### **9. Mental and Physical Health Issues**

Regular MD visits are essential

Know your numbers!

Breast cancer and prostate cancer concerns

[www.safecallnow.org](http://www.safecallnow.org) (Suicide and Addiction issues)

We have to address the mental health issues in our profession.

#### **10. End of career – end of life planning**

Financial planning

Beneficiaries

When you retire, please retire

**Well, that wraps it up for our brief time together. My program today was a broad discussion of risk management concepts. I do not undertake to provide specific recommendations as to best practices in a particular scenario and nothing in this presentation should be construed as legal advice or a recommendation by me to follow a specific course of conduct when presented with a particular risk or situation.**

**Please recognize that any hypotheticals or examples provided in the program today are to encourage understanding of broad risk topics and are not to be interpreted as any recommendation to modify the existing practice you have in your operations.**

**Before you make any changes to the way you currently do your job, please contact your department's attorney. Thanks for your attention today and for all you do to make things better in our world.**

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